



# Excise Tax Advisory

Excise Tax Advisories (ETAs) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## Manufacturers' Machinery and Equipment Exemption — Devices

The Department has issued a series of Excise Tax Advisories (ETAs) to address questions regarding the retail sales and use tax exemption provided by RCW 82.08.02565 and 82.12.02565, commonly referred to as the manufacturers' machinery and equipment exemption (M&E exemption). This advisory, ETA 2012-4S, is issued to address the application of the M&E exemption to devices, including books and software. Please refer to ETA 2012.08.12.13601 for a current list of the issues covered by this series.

The M&E exemption defines "machinery and equipment" as "industrial fixtures, devices, and support facilities." Questions have been raised about the meaning of the term "device," particularly in regard to whether books and software qualify for the M&E exemption. The issue involves the definition of "machinery and equipment," and because that definition applies broadly to the whole exemption, the analysis and outcome is the same regardless of the type of operation in question.

The statute does not provide a definition of "device." Device is defined in Rule 13601, the M&E rule. The examples given in the rule reflect the notion that the phrase "machinery and equipment" has a meaning within the context of an industrial setting. In that context "machinery and equipment" do work and have an applied function.

It is an established rule of statutory interpretation that words in a statute are given their ordinary and common meaning and that courts and others may resort to dictionaries to determine the meaning of statutory language. The common dictionary definitions of machinery and equipment, device, and book indicate that books are not within the scope of the exemption. For example, the Webster's II New Riverside University Dictionary defines machinery as "machines or machine parts in general." Machine is defined as "a system, usu. of rigid bodies, constructed and connected to change, transmit, and direct applied forces in a predetermined way to accomplish a particular objective, as performance of useful work." The American Heritage Dictionary of the English Language: Fourth Edition 2000 uses this definition of device: 1. A contrivance or an invention serving a particular purpose, especially a machine used to perform one or more relatively simple tasks.

*Advisories numbered as 2 plus three digits (e.g. 2002.16.179) are advisories issued on or after July 2, 1998.*

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Rule 13601 defines device as “an item that is not attached to the building or site” and provides examples that are ordinarily considered to be equipment or machinery. The examples in Rule 13601 are “[f]orklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.” These examples fit within the common dictionary definition of “machinery and equipment” and “device.”

### ***Books***

In order to be eligible as a device the property has to perform a task and do work. Books do not meet the definition of device. The American Heritage Dictionary of the English Language, Fourth Edition defines “book” as “[a] set of written, printed, or blank pages fastened along one side and encased between protective covers; and Black’s Law Dictionary, Fifth Edition defines it as “[a]n assembly or concourse of ideas expressed in words.” Similarly, libraries and magazines do not meet the definition of device. Books are used for reference and to assist in or guide or control decision making but are not used by a person in the same manner as machinery and equipment, which have an applied function.

### ***Software***

Software satisfies Rule 13601’s definition of device because it is performs a task and is also not attached to a building or site. Consequently, software can qualify for the M&E exemption if it meets a used directly test. The issue is whether the software performs a task in relation to the qualifying operation. For example, a software program that controls the operation of equipment that cuts logs into lumber qualifies for the M&E exemption. It performs a task, the control of a piece of eligible machinery, and is used directly in the manufacturing operation. On the other hand, a CD-ROM of a repair manual for this equipment does not qualify for the M&E exemption because the software does not perform a task in the manufacturing operation. The Department uses the definition of “software” in RCW 82.04.215, which is as follows:

“Software” means any information, program, or routine, or any set of one or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, *to perform a task or set of tasks*. [Emphasis added.]